

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KRISTINE M. DISHONG,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of the Social Security
Administration,

Defendant.

8:15-CV-399

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) ([filing 23](#)). The defendant has no objection to awarding of fees and expenses in the amount of \$8,889.87, which represents 46.5 hours of work at a rate of \$191.18 per hour.¹ [Filing 24 at 7](#).

The Court has determined that plaintiff was the prevailing party in this action, as the Commissioner's decision was reversed and the case was remanded to the Commissioner for further proceedings; that the application for fees was filed in a timely fashion;² and that the position of the

¹ The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. See [filing 25 at 2](#).

² An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See *Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); see also *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).

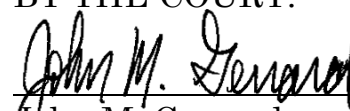
Commissioner was not substantially justified because the administrative law judge failed to develop the record and made findings that were not supported by medical evidence. See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 23) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$8,889.87.

Dated this 25th day of October, 2017.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge